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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,851	04/09/2004	Masami Okamoto	251039US2	8668
22850	7590	11/15/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			NGO, HOANG X	
			ART UNIT	PAPER NUMBER
			2852	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/820,851	OKAMOTO, MASAMI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hoang Ngo	2852	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 2, 9, 15, 21, 22, 29, 35, 41, 48, 55, and 56 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 3-8,10-14,16-20,23-28,30-34,36-40,42-47,49-54 and 57-62.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of group I, claims 1, 2, 9, 15, 21, 22, 29, 35, 41, 48, 55, and 56 in the reply filed on 9/6/2005 is acknowledged. The traversal is on the ground(s) for the following reasons:

- a. The Examiner has not established that an undue burden would be required if all the claims were examined together since similar subject matter must be searched and considered and the restricted claims would appear to be part of an overlapping search area
- b. The Examiner has failed to provide reason to support that the species are patentably distinct and in violation of MPEP § 816 and § 806.04(f).

This is not found persuasive because of the following reasons:

a. MPEP § 808.01(a) states "—Since the claims are directed to independent inventions, restriction is proper pursuant to 35 U.S.C. 121, and it is not necessary to show a separate status in the art or separate classification". Also, it would require the Examiner to search in many different subclasses based on many embodiments (or species). Therefore, the Examiner strongly believes that it would place a serious burden on the Examiner if he has to search the entire application.

b. in regards to MPEP § 816. The MPEP § 816 has nothing to do with the species restriction. The fourth paragraph of the MPEP § 816 states "—each group, specifying the type of relationship of each group as by stating the group is drawn to a process, or to subcombination, or to product (emphasis added), etc., and should

indicate the classification or separate status of each group, as for example, by class and subclass." The argument relating to species restriction is therefore invalid. In regarding to the examiner has failed to address in any way whether the pending claims recited mutually exclusive characteristics according to MPEP § 806.04(f). The species I discloses a control device for changing an amount of power supplied to a heat source based on an elapsed time since a start of image formation, and species II discloses a control device for changing an amount of power supplied the heats source based on a number of recording media formed since a start of image formation. They are mutually exclusive because Species I and Species II have different control devices and sensor mechanisms. The similar reasons apply to the rest of the species.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 9, 15, 21, 22, 29, 35, 41, 48, 55, and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujita et al.

Fujita et al disclose a fixing device 29 (Fig. 10) including means and method for fixing an image formed on a recording medium 37, comprising a fixing member 34 arranged on a recording medium conveying path (Fig. 11); a pressing member 35 configured to press-contact the fixing member (Fig. 11); a heat source (i.e. 2a, 2b, Fig.

11) configured to heat the fixing member; a storage device 4 configured to supply power to the heat source; and a control device 8 configured to change an amount of power supplied from the storage device to the heat source based on an elapsed time since a start of image formation (Col. 6, lines 32-48).

Fujita et al further disclose a temperature detecting device 13 configured to detect a temperature of the fixing member, wherein the control device is configured to compare the temperature of the fixing member with a reference temperature and to change the amount of power supplied from the storage device to the heat source based on a comparison result (Col. 7, lines 43-60), and wherein the control device is configured to change the reference temperature based on the elapsed time (Col. 6, line 40); the control device is configured to change the amount of power supplied from the storage device to the heat source by shutting off and turning on a supply of power from the storage device to the heat source (Col. 7, lines 55-60); the storage device is an auxiliary power source (i.e. auxiliary power source 4) configured to be charged by a commercial power supply 3 (Fig. 7); an image forming device (i.e. developer roller 102, Fig. 17) configured to form an image on the recording medium.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang Ngo whose telephone number is (571) 272-2138. The examiner can normally be reached on 6:00am - 2:30pm.

Art Unit: 2852

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Arthur Grimley can be reached on (571) 272-2136. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hoang Ngo  
Primary Examiner  
Art Unit 2852

HN  
November 10, 2005